

AMENDED RESPONSE TO
DTE Record Request 3

Request:

Does the company have an estimate of how long it would take to obtain a zoning variance from the board of appeals, for whatever variances are needed? And the second part is, does the company have an estimate of how long a judicial appeal of the special permit could take?

Response:

Inasmuch as the expansion of an existing electric switchyard is not permitted as of right in the City of Salem's zoning district "I" (Industrial), NEP would first be obliged to apply for a special permit under the City's Zoning Ordinance. If that were granted, NEP would also be required to seek a variance from those elements of the ordinance that its project design could not meet due to technical specifications.

As noted in the Department's order relative to USGen New England's petition for a zoning exemption, "the process for obtaining a variance from the Board of Appeals can take up to 114 days from the submittal of the petition for a variance; including appeal periods, the process could take almost seven months." *USGen New England, Inc.*, DTE 03-83 at 16 (June 2004). Since a variance can be appealed in the Land Court, Superior Court, Housing Court or District Court, the project would be subject to the uncertainty and delays of the court system, which could result in further delays. *Id.* at 17.

The process of obtaining a special permit from which an appeal could be lodged could take as long as 189 days. A judicial appeal, which could be filed with the Land Court, Superior Court, Housing Court or District Court, would be subject to the uncertainty and delays of the court system and could take years. NEP's proposed project, as well, could be impeded by "the potential delays associated with the Special Permit process." *Id.* at 19.